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C O N F I D E N T I A L SECTION 01 OF 02 TEL AVIV 000808

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DEPARTMENT FOR EB/IPE CLACROSSE  
DEPARTMENT PLEASE PASS TO USTR JCHOE-GROVES AND ESAUMS  
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LOC FOR STEPP

E.O. 12958: DECL: 02/22/2016  
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [IS](#) [ECONOMY](#) [AND](#) [FINANCE](#)  
SUBJECT: SPECIAL 301 REVIEW: US EMBASSY TEL AVIV SUBMISSION

REF: A. A) TEL AVIV 00689 (NOTAL)  
B. B) 05 TEL AVIV 6279  
C. C) 05 TEL AVIV 6006

Classified By: Ambassador Richard H. Jones for reasons 1.4 (b) and (d)

1. (C) Summary. The overall climate for protection of intellectual property in Israel worsened in 2005. In December 2005, the Knesset passed a revision to patent term extension regulations that significantly curtailed the period of patent protection for research-based pharmaceuticals. The GOI championed this legislation despite strong USG statements that the legislation harms IPR protection in Israel. The draft copyright legislation presented to the Knesset in October 2005 fails to provide national treatment to American right holders as required by the 1950 U.S.-Israel Copyright Agreement. The GOI officials who work on intellectual property legislation are well trained and staffed, but have consistently moved to protect Israeli domestic interests rather than encourage a strong standard of protection for IPR. Given the lack of progress on key issues in 2005 post recommends that Israel remain on the Priority Watch List. End summary.

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Patent Term Extension  
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2. (C) The Knesset approved the revision to the Patent Term Extension (PTE) legislation in December 2005 despite USG efforts to persuade the GOI to suspend consideration of the legislation pending further bilateral consultations. The legislation shortened the term of protection for a pharmaceutical patent extension in Israel to the "lowest common denominator" and makes applying for an extension unnecessarily burdensome. Most troubling, the legislation has been enacted retroactively, meaning that U.S. companies are denied protection for patent extensions that have already been approved. These factors have combined to result in a measurable degradation of the protection for pharmaceutical patents in Israel over the last year.

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Data Exclusivity  
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3. (C) Despite GOI commitments to revisit the data exclusivity legislation, post has no indication that the GOI is interested in amending the most objectionable clauses of the bill. The legislation does not prevent Israeli companies from gaining access to confidential files which foreign pharmaceutical companies must submit in the course of applying to export a product to Israel. In effect, a company which registers a drug in Israel risks losing the ability to sell the product in all other countries where a non-TRIPs compliant data exclusivity regime has been adopted. In addition, the legislation provides a direct advantage to Israeli generic manufacturers, allowing them to rely on the file during the period of "exclusivity" for purposes of preparing to launch the generic product. This provision ensures that generic manufacturers with access to the files are the first to market the drug worldwide when protection expires.

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Copyrights  
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4. (C) The draft copyright legislation fails to protect US IPR interests in several ways. Despite a commitment by the GOI to uphold national treatment as required by the 1950 U.S.-Israel Copyright Agreement (espoused in an exchange of letters between USTR and the Ministry of Justice in October 2004), no language regarding this protection is included in the draft legislation. Local representatives of U.S. rights holders are concerned because Israeli law requires that treaties and agreements be enacted through national legislation, and failure to include language in the copyright law could leave an unintended legal loophole for those with an intent to infringe. In addition the draft legislation

does not contain language defining end-user piracy as a crime. The legislation does not provide protection for phonograms at the same level as for other creations. Numerous other minor technical problems with the draft legislation (which appear to be held over from language from the original UK Copyright Act) can be amended quite easily, but will require that the drafters of the legislation be willing to propose the changes to the Knesset committee considering the legislation.

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Training  
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15. (C) Post believes that regular engagement with GOI officials responsible for drafting copyright legislation via visits or DVCs will be necessary over the next six months to secure improvement in the protections provided in the legislation. GOI legal staff who draft copyright and patent laws are well trained, and declined invitations for IPR training programs provided by USG agencies last year.

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Recommendation  
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16. (C) Given the lack of progress on improving data exclusivity legislation, the passage of patent term extension revisions that shorten patent protection and retroactively erase already-granted patent term extensions, and the gaps in the draft copyright bill, post recommends that Israel remain on the Priority Watch List. Israel has shown no inclination to engage with the USG to make improvements in these laws. Without the continued PWL designation, post sees no prospect of positive movements in the immediate future either. Given that 2006 is an election year and a new government will be formed in April, an out-of-cycle review in the fall, once the new GOI has had time to get its bearings, might help move these issues forward.

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